

HERTOG 2017 SUMMER COURSES
LANDMARK SUPREME COURT CASES:
Scalia and the Last Half-Century of Constitutional Law
Adam J. White, fellow, Hoover Institution, Stanford University

The seminar will focus on five landmark Supreme Court cases from the past 50 years with a view to exploring how politics and law interact, the different approaches to constitutional judgment and rhetoric, and the impact of the Court's decisions on American lives. We will find the late Justice Antonin Scalia at the center of this discussion throughout the week, as we consider how his focus on constitutional "originalism" and the Constitution's structural checks and balances, both rooted in his view of the courts' properly limited role in republican government, profoundly changed the way in which Americans view the Constitution and constitutional law.

Location: This class will take place at **George Washington University, District House**
(2121 H Street NW, Room 117).

Resources: To learn more about other important figures in constitutional law, we encourage you to visit ContemporaryThinkers.org, a website covering the ideas and influence of pioneering intellectuals of the 20th and 21st centuries.

Sponsored by the Hertog Foundation, ContemporaryThinkers.org includes sites devoted to Walter Berns, Martin Diamond, Herbert Storing, and many others.

Sunday, July 23, 2017

3:00 p.m. to 5:00 p.m. Summer Course Fellow Arrival and Check-in —
George Washington University, Thurston Hall (1900 F St NW)

Monday, July 24, 2017

9:00 am to Noon ***Griswold: The Return of Judge-Made Liberties***

Readings:

- *Federalist* No. 78 (1788)
- Brutus, No. 15 (1788)
- *Griswold v. Connecticut* (1965)
- Holmes's Dissent in *Lochner v. New York* (1905)
- Alexander Bickel, "The Heavenly City of the Twentieth-Century Justices," in *The Supreme Court and the Idea of Progress* (1970)

Noon to 1:15 pm

Lunch Break

1:30 to 3:00 pm

Guest Speaker: Edward Whelan, president, EPPC, on Justice Scalia, the Supreme Court, and American Constitutionalism

Tuesday, July 25, 2017

9:00 am to Noon

***Heller*: The Triumph of Justice Scalia's Originalist Jurisprudence**

Readings:

- *D.C. v. Heller* (2008)
- Antonin Scalia, "Originalism: The Lesser Evil," *University of Cincinnati Law Review* 57:849 (1988)
- J. Harvie Wilkinson, "Originalism: Activism Masquerading as Restraint," in *Cosmic Constitutional Theory* (2012)

Noon to 1:15 pm

Lunch Break

1:30 to 3:00 pm

Guest Speaker: Ilya Shapiro, senior fellow, Cato Institute, on the need for "judicial engagement"

Wednesday, July 26, 2017

9:00 am to Noon

***Noel Canning*: Tradition versus originalism**

Readings:

- *Federalist* No. 37 (1788)
- Office of Legal Counsel Opinion on Recess Appointments, January 6, 2012
- *NLRB v. Noel Canning* (2014)
- Thomas Merrill, "Bork vs. Burke," *Harvard Journal of Law and Public Policy* 19:2 (1995)

Noon to 1:15 pm

Lunch Break

1:30 to 3:00 pm

Christopher Scalia, writer and public relations professional, on Justice Scalia's legacy as a writer, speaker, thinker, father

Thursday, July 27, 2017

9:00 am to Noon

***Morrison*: Taking structure seriously**

Readings:

- *Federalist* No. 51 (1788)
- *Federalist* No. 70 (1788)
- *Morrison v. Olson* (1988)

- Adam White, “The American Constitutionalist,” *Weekly Standard*, February 29, 2016

Noon to 1:15 pm **Lunch Break**

1:30 to 3:00 pm **Mock Oral Arguments**

Friday, July 28, 2017

9:00 am to Noon **Smith: Rights and Republicanism**

Readings:

- *Employment Division v. Smith* (1990)
- Michael McConnell, “Taking Religious Freedom Seriously,” *First Things*, May 1990
- Yuval Levin, “The Perils of Religious Liberty,” *First Things*, February 2016
- Antonin Scalia, “Teaching About The Law,” *Christian Legal Society Quarterly*, Fall 1987

12:30 p.m. to 2:00 pm	Working at a Think Tank: Lunch & Discussion American Enterprise Institute (1789 Massachusetts Avenue NW)
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Saturday, July 29, 2017

11 a.m.	Summer Course Fellow Check-Out and Departure — George Washington University, Thurston Hall
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Instructor and Speaker Bios

Instructor



Adam J. White is a research fellow at the Hoover Institution based in Washington, DC, writing on the Constitution, regulation, and the courts. He is also an adjunct professor at George Mason University's Antonin Scalia Law School, teaching administrative law. Prior to joining Hoover, he was an adjunct fellow at the Manhattan Institute and practiced law with Boyden Gray & Associates. He clerked for Judge David Sentelle of the US Court of Appeals for the DC Circuit, after graduating from Harvard Law School and the University of Iowa's College of Business. He is a contributing editor with *National Affairs*, *The New Atlantis*, and *City Journal*, and a contributor to the *Yale Journal on Regulation's* blog.

Speakers



Christopher J. Scalia works at a public relations firm in Washington, DC. His commentary and reviews have been published in *The Wall Street Journal*, *The Washington Post*, *The Weekly Standard*, and *USA Today*. His poetry, fiction, and scholarship have also been widely published. Dr. Scalia graduated from the College of William and Mary, received a PhD in English from the University of Wisconsin-Madison, and was a professor at the University of Virginia's College at Wise for eight years. A son of the late Justice Antonin Scalia, Chris lives in Virginia with his wife and two children.



Ilya Shapiro is a senior fellow in constitutional studies at the Cato Institute and editor-in-chief of the *Cato Supreme Court Review*. Before joining Cato, he was a special assistant/adviser to the Multi-National Force in Iraq on rule-of-law issues and practiced at Patton Boggs and Cleary Gottlieb. He regularly provides commentary for various media outlets. Shapiro has testified before Congress and state legislatures and, as coordinator of Cato's amicus brief program, filed more than 200 "friend of the court" briefs in the Supreme Court.



Edward Whelan is the President of the Ethics and Public Policy Center. His areas of expertise include constitutional law and the judicial confirmation process. He has written essays and op-eds for newspapers (including the *Wall Street Journal*, the *New York Times*, and *National Review Online*), opinion journals, and academic symposia and law reviews. Mr. Whelan has worked in all three branches of the government. He served in the Office of Legal Counsel in the US Department of Justice, as General Counsel to the US Senate Judiciary Committee, and clerked for the late Justice Antonin Scalia. Mr. Whelan graduated from Harvard College and received his JD in 1985 from Harvard Law School.